

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7892

BILL NUMBER: SB 494

NOTE PREPARED: Jan 12, 2005

BILL AMENDED:

SUBJECT: Civil Commitment of Sexual Predators.

FIRST AUTHOR: Sen. Young R Michael

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from prison after serving a sentence imposed for a sexual offense conviction. The bill provides for the civil commitment of a person charged with a sexual offense upon a finding of not responsible by reason of insanity. It provides for an annual review and hearing on the person's condition and for the possible release of the person.

The bill requires the Commissioner of the Department of Correction to establish a multidisciplinary team to assess whether a person meets the definition of a sexually violent predator. It requires the Attorney General to establish a Prosecuting Attorney Review Committee to review the records of each person referred to the review committee. It also makes conforming amendments.

Effective Date: July 1, 2005.

Explanation of State Expenditures: *Summary:* This bill affects the Department of Correction (DOC), the Office of the Attorney General (AG), and the Division of Mental Health and Addiction (DMHA). DOC is required to assemble a multidisciplinary team to assess sex offenders before they are released. DOC would likely not require any additional staff.

The AG is to appoint a Prosecuting Attorney Review Committee. The estimated staff costs for these employees are \$194,988 in FY 2006. This bill provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from prison after serving a sentence imposed for a sexual offense conviction. The bill provides for the civil commitment of a

person charged with a sexual offense upon a finding of not responsible by reason of insanity. It provides for an annual review and hearing on the person's condition and for the possible release of the person.

DMHA would be responsible for housing offenders determined to be sexually violent predators. Expenditures for this bill would depend on the facilities these offenders may be housed in. FSSA anticipates that a new facility would have to be built to house these offenders. FSSA reports that it estimates the cost to be approximately \$537 per bed per day, or \$196,000 per year, to house a person falling under the requirements of this bill. A summary of expenses for all three agencies is provided in the following table.

Summary of Expenses For Civil Commitments for Sexual Predators for State Agencies Projected Through FY 2011 (In Millions)							
FY	2006	2007	2008	2009	2010	2011	2012
DOC	Minimal costs if court decisions are made before offender's release date						
AG	\$0.19	\$0.19	\$0.20	\$0.20	\$0.21	\$0.21	\$0.22
DMHA	<u>\$11.40</u>	<u>\$22.70</u>	<u>\$34.10</u>	<u>\$45.50</u>	<u>\$56.80</u>	<u>\$68.20</u>	<u>\$79.60</u>
Total	<u>\$11.59</u>	<u>\$22.89</u>	<u>\$34.30</u>	<u>\$45.70</u>	<u>\$57.01</u>	<u>\$68.41</u>	<u>\$79.82</u>

Additional Details: This bill would affect three different state agencies at different points in time.

The *Department of Correction (DOC)*, which houses offenders who have been convicted of a sex crime, is required to assemble a multidisciplinary team to assess sex offenders before they are released. If the sex offender is considered to be a potential sexual predator, the Department would notify the Office of the Attorney General about the offender's scheduled release from prison. If the offender is held for additional hearings (see below), the Department of Correction would be required to hold the offender in secure custody while the hearing is being held.

The *Office of the Attorney General (AG)* is to appoint a Prosecuting Attorney Review Committee to review the records of each person referred to the AG's office by the Department of Correction. If the Review Committee determines that the offender in question is a sexually violent offender, the Attorney General has the discretion to file a petition with a court for a probable cause hearing not later than 75 days after the date that the AG receives written notice of the offender's scheduled release. If the court determines that the offender is a sexually violent predator, the court shall conduct a trial -- which can be by jury -- within 60 days of the probable cause hearing.

If the court determines that the offender is a sexually violent predator, then the court will commit the offender to the custody of the *Division of Mental Health and Addiction (DMHA)*. The offender will then remain until the offender is safe to be at large. The Division may enter into an agreement with the Department of Correction for confining the offender.

Estimating the Number of Offenders Affected: Offenders would come from two different sources:

1. Defendants found not responsible by reason of insanity at the time of the commission of the crime.
2. Offenders released from the Department of Correction after serving a term of imprisonment after being convicted of a sex crime.

Almost all of the offenders are likely to come from the second category.

The Department of Correction reports that for CY 2004, approximately 965 sex offenders were released. Based on discussions with the assistant attorney general in the state of Kansas, the Kansas AG's office filed probable cause petitions against roughly 12% of the sex offenders scheduled for release.

Number of Offenders Brought to Trial After Probable Cause Petition:				
Based on FY 2003 Projected Releases:		Based on Experience in State of Kansas		Number of Offenders
965	x	12%	=	116

Of these, roughly 50% are estimated to be committed in this civil process as a violent sexual predator. Consequently, in any given year, 116 offenders would be subject to a probable cause hearing and 58 offenders are projected to be committed to the Division of Mental Health and Addiction.

Number of Offenders Committed As Sexual Predators:				
Based on Number of Offenders Brought to Trial		Percent Committed based on Kansas Experience		Estimated No. of Committed Offenders
116	x	50%	=	58

The number of offenders who could be committed and serving time in DMHA facilities by 2012 would depend on how long the offenders would remain in the program. The civil commitment law has existed in Kansas since 1995, and one offender has been released and ten are in the transitional or conditional stage of release as of this date. Consequently, if on average, offenders remain in the DMHA facility for seven years, the accumulated population in this new facility could be 406 before any offenders begin to be released.

Potential Number of Offenders In Committed Violent Sex Offender Unit Managed by the DMHA If Offenders Are Released After Seven Years By Fiscal Year							
	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Cumulative Number of Sexual Predators	58	116	174	232	290	348	406

Estimated Costs By Agency:

Department of Correction: Assembling a multidisciplinary team to examine the records of offenders committed for a sexually violent crime who are scheduled to be released would likely not require any additional staff. Detaining an offender would not affect the Department of Correction's prison capacity **if** all evaluations and court decisions were made prior to the offender's earliest possible release date. DOC would incur transportation and related security costs when an offender needs to appear in court in a civil commitment hearing.

Office of the Attorney General: The estimated staff needs include two deputy attorneys, two investigators, and a part-time secretary. The estimated staff costs for these employees are \$194,988 in FY 2006. These costs

include salaries, fringe benefits, and indirect costs.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

[*Background Information:* According to the December 6, 2004, manning table, the Attorney General's Office had 4 full-time vacancies for attorneys, at least 3 vacancies for clerical workers, and 19 vacancies for investigators.]

Division of Mental Health and Addiction: DMHA expenditures for this bill would depend on the facilities these offenders may be housed in or, if an interagency agreement is reached, what DOC facilities might house them.

The Family and Social Services Administration (FSSA) anticipates that a new facility would have to be built to house these offenders. [Note: These added costs will be included in a later update of the fiscal note for this bill.]

FSSA reports an estimated cost to be approximately \$537 per bed per day, or \$196,000 per year, to house a person falling under the requirements of this bill.

The bill also specifies that these confined offenders be given treatment. Cost estimates for treatment depend on the types of services necessary.

Summary of Costs for the State:

Summary of Expenses For Civil Commitments for Sexual Predators for State Agencies Projected Through FY 2011 (In Millions)							
FY	2006	2007	2008	2009	2010	2011	2012
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Explanation of State Revenues:

Explanation of Local Expenditures: Courts would likely incur more expenses for the civil commitment procedures as well as for the professional evaluations of persons held in county jails to determine whether a person is a sexually violent predator, as defined in this bill.

Prosecuting attorneys would also be required to have a series of additional hearings to determine whether a crime is sexually motivated.

As an illustration of the added expenses that counties would incur, there are three types of costs that would be specifically identifiable with each offender who is tried as a sex offender and each offender determined to be a sexual predator.

For each offender against whom the Attorney General petitions for a probable cause hearing and assuming that each offender is determined to be a sexual predator, the offender has the right to a jury trial and the right to an examination.

If each jury trial involves a six-member jury with an alternate and the jury trial lasts two days, the cost per trial could be as high as \$560 (\$280 for jury fees for each day). In addition, there would be fees for a psychiatric examination (assume 3 hours of service at \$100 per hour) and for legal assistance (assume 15 hours at \$100 per hour). The total costs for a jury trial for an offender are estimated and provided in the following table.

Estimated Cost for One Jury Trial to Determine Whether a Person is a Sexual Predator		
<u>Cost Item</u>	<u>Method</u>	<u>Estimated Cost</u>
Jury Fees	7 members x \$40 per day x 2 days	\$560
Expert Witness Fees	3 hours x \$100 per hour	\$300
Legal Expenses	15 hours x \$100 per hour	<u>\$1,500</u>
Total Costs for a Single Jury Trial		<u>\$2,360</u>

If all offenders were declared indigent and requested jury trials, counties could be subject to the following annual expenses each year.

Estimated Costs for Jury Trials:				
<u>Number of Jury Trials</u>		<u>Cost Per Trial</u>		<u>Annual Cost of Trials</u>
116	x	\$2,360	=	\$273,760

In addition to these trials, each committed sexual predator has the right to an annual review. Assuming that each hearing involves an attorney representing the person and an expert witness, the average costs for a hearing would be the following.

Estimated Cost For An Annual Review:		
<u>Cost Item</u>	<u>Method</u>	<u>Estimated Cost</u>
Expert Witness Fees	2 hours x \$100 per hour	\$200
Legal Expenses	4 hours x \$100 per hour	<u>\$400</u>
Total Cost for Annual Hearing		\$600

As the cumulative number of offenders committed as sexual predators increases, the costs of annual hearings will also increase.

Based on the projected number of cumulative sexual predators who are committed, the costs of both the added jury trials and annual reviews are projected between 2006 and 2012 and provided in the following table.

Estimated Costs for Counties:

Potential Number of Offenders In Committed Violent Sex Offender Unit Managed by the Division of Mental Health and Addiction If Offenders Are Released After Seven Years							
<u>Costs of:</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Annual Reviews	\$34,800	\$69,600	\$104,400	\$139,200	\$174,000	\$208,800	\$243,600
Jury Trials	<u>\$273,760</u>	<u>\$273,760</u>	<u>\$273,760</u>	<u>\$273,760</u>	<u>\$273,760</u>	<u>\$273,760</u>	<u>\$273,760</u>
Total Costs:	<u>\$308,560</u>	<u>\$343,360</u>	<u>\$378,160</u>	<u>\$412,960</u>	<u>\$447,760</u>	<u>\$291,200</u>	<u>\$517,360</u>

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; Division of Mental Health and Addiction; Attorney General; State Parole Board.

Local Agencies Affected:

Information Sources: Department of Correction, Planning Division and Legal Division; Nola Wright, Assistant Attorney General, Civil Litigation, Kansas Office of Attorney General, 785-296-7971; Willard Mays, DMHA, 232-7894.

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